

REMARKS

With the entry of the amendment above, the pending claims are Claims 1-15, with Claims 16-60 standing canceled. The Office Action mailed 1 July 2004 states that Claims 1-15 are in condition for allowance. Accordingly, with the entry of the amendment above, Applicants respectfully request allowance of Claims 1-15.

A Review of the Prosecution History

The application papers filed August 27, 2003 include a Transmittal Letter canceling Claims 16-18 and 21-60. However, the first office action (mailed July 1, 2004) erroneously addressed the patentability of Claims 16-18 and 21-60. More particularly, the Office Action set forth an obviousness-type double patenting rejection of Claims 28-39 over USPN 6,682,825. Still further, the Office Action erroneously included a rejection of Claims 16-19, 28, 36, 38, 39, 49, 50, 53, 54, and 56 as anticipated by USPN 6,682,285, to Newsome. Section 5 of the Office Action states that Newsome discloses "...five-layer films comprising an oxygen barrier layer, polyolefin adhesive layers, and surface layers comprising a blend of EVA and LLDPE, wherein the LLDPE can be Admer NF-500, a graft modified (acid) polyethylene resin."

In response to the July 1 Office Action, Applicants filed an amendment mailed January 3, 2005. In this amendment, Applicants continued the erroneous examination of Claims 16-18 and 21-60 by canceling Claims 28-39 and deleting the phrase "carboxyl modified polyethylene" from rejected Claims 16, 19, 49, and 53 (among other claims). In the remarks, Applicants also stated:

...the amendment to delete 'carboxyl modified polyolefin' [sic, polyethylene] from the second component in independent Claims 16, 19, 49, and 53, and from the fourth component of Claim 49, renders each of these independent claims (and claims depending therefrom) patentable over NEWSOME." [111 Amendment of 3 January 2005, page 15 lines 17-20]

Applicants take this opportunity to set the record straight as to erroneous implications in the

prosecution history. More particularly, the quotation from the 3 January amendment, set forth above, implies that without the deletion of the phrase "carboxyl modified polyethylene", NEWSOME anticipates the various claims rejected in the July 1, 2004 Office Action. Applicants contend that even without this amendment, the rejected claims are patentable over NEWSOME.

More particularly, the disclosure of outer film layers comprising EVA and LLDPE (wherein the LLDPE can be Admer NF-500 graft modified (acid) polyethylene resin) is not a disclosure which anticipates the composition recited in, for example, Applicants' Claim 19. Applicants first point out that none of the combinations of members recited in the first and second components are combinations reading on the blend of EVA and LLDPE disclosed in NEWSOME. Moreover, none of the combinations of members recited in the first and second components of Claim 19 are combinations reading on a blend of EVA and Admer NF-500. Applicants contend that Admer NF-500 is an ethylene/alpha-olefin copolymer which has been modified by having acid groups grafted thereon. While this is a modified ethylene/alpha-olefin copolymer in accordance with the first component, none of the group members recited in Claim 19 as the second component read on EVA.

Moreover, carboxyl-modified polyethylene does not read on Admer NF-500. The deletion of carboxyl-modified polyethylene from Claims 16, 19, 49, and 53 (as well as additional claims) was unnecessary to overcome the rejection based on NEWSOME. Carboxyl-modified polyethylene is described in Applicants' specification as follows:

As used herein, the phrase "carboxyl-modified polyethylene" refers to a class of polymers which are similar to ionomers, but which are herein considered to be chemically distinct from ionomers. Carboxyl-modified polyethylene, also referred to as "EMA ionomer", is produced from metal-based materials such as zinc acetate or sodium hydroxide reacted with ethylene/methacrylate copolymer, as is known to those of skill in the polymer art.

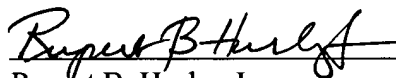
Clearly, this description does not include "graft modified (acid) polyethylene resin", such as Admer

NF-500. As a result, Applicants note that Claims 16, 19, 49, and 53, as well as canceled Claim 28 (which resembles Claim 1 of USPN 6,682,825), are all clearly patentable over NEWSOME because NEWSOME does not teach or suggest the composition comprising the first component and second component as set forth in the core seal-assist layer of canceled independent Claims 16, 19, 28, 49, and 53.

Conclusion

In view of all of the foregoing amendments and remarks, Applicants respectfully request reconsideration of the patentability of the pending claims, with a view towards allowance. If a Notice of Allowance is mailed indicating the allowance of Claims 1-15 without comment as to the patentability of canceled Claims 16, 19, 28, 49, and 53, Applicants will assume that the Examiner agrees with the above comments as to the patentability of canceled Claims 16, 19, 28, 49, and 53.

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